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2 District of Arizona
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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF ARIZONA

12 United States of America,

13 Plaintiff,

14 v.

15 Christopher Matthew Clements,

16 Defendants.
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CR-08-303-TUC-DCB(CRP)

**MOTION TO DISMISS INDICTMENT
AND RESPONSE TO DEFENDANT'S
MOTION TO DISMISS**

18 The United States of America, by and through its attorney undersigned, hereby moves the
19 court for an order pursuant to Fed. R. Crim. P. 48(a), dismissing the indictment as to defendant
20 Christopher Matthew Clements in this matter with prejudice. On August 22, 2011, the Ninth
21 Circuit Court Appeals issued an opinion in this case reversing the defendant's conviction. The
22 Government filed Motions to Stay the issuing of the mandate pending a decision to accept
23 certiorari by the United States Supreme Court in *United States v. Valverde*, 628 F.3d 1159 (9th
24 Cir. 2010) (*see* Supreme Court Docket No. 11-40), the opinion upon which the panel majority
25 relied when issuing its opinion in this matter. At the time the government filed its motions for
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1 stay the petition for certiorari in *Valverde* was still pending. The Supreme Court ultimately
2 denied the petition for certiorari in *Valverde*. On that same date, the Government filed a motion
3 with the Ninth Circuit to withdraw the its requests to stay the issuing of the mandate. The
4 mandate was issued on March 9, 2012. As such, the case should be dismissed.

6 Defense Counsel, John Kaufmann, has also filed a motion to dismiss the indictment, so the
7 government assumes he would not have an objection to this motion.

9 However, in his motion to dismiss, the defendant requests credit for time served for any
10 future federal sentence imposed upon him for violation of federal law. The defendant cites no
11 authority in support of this request. The government would object to this part of the motion.

13 If the defendant is arrested in the future, charged with a federal offense, and convicted of
14 a federal offense, then it would be up to the sentencing judge to determine the appropriate
15 sentence and the extent that credit for time previously served is appropriate pursuant to Title 18
16 United States Code Section 3585(b) or other applicable federal law.

18 Respectfully submitted this 21st day of March, 2012

19 ANN BIRMINGHAM SCHEEL
20 United States Attorney
21 District of Arizona

22 *s/ Shelley K.G. Clemens*
23 Shelley K.G. Clemens
24 Assistant U.S. Attorney
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Copy of the foregoing served electronically or
by other means this ^{21st} day of March, 2012, to:

John Kaufmann, Esq.
Attorney for Defendant